

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

WASHINGTON STATE PHARMACY  
ASSOCIATION, NATIONAL ASSOCIATION OF  
CHAIN DRUG STORES, NATIONAL COMMUNITY  
PHARMACISTS ASSOCIATION, SHIRAZ  
SPECIALTY PHARMACY, CAMMACK'S  
PHARMACY, INC., RITZVILLE DRUG COMPANY,  
SOAS, LLC, CAMP RILEY DRUG COMPANY d/b/a  
PHARM-A-SAVE, and GENOA HEALTHCARE,  
LLC,

Plaintiffs,

vs.

CHRISTINE GREGOIRE, not individually, but Solely  
in her official capacity as Governor of the State of  
Washington, SUSAN N. DREYFUS, not individually,  
but solely in her official capacity as Interim Secretary  
of the Washington State Department of Social and  
Health Services, DOUG PORTER, not individually, but  
in his official capacity as Assistant Secretary of the  
Health and Recovery Services Administration,  
Washington State Department of Social and Health  
Services, THE WASHINGTON STATE  
DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES, and HEALTH AND RECOVERY  
SERVICES ADMINISTRATION,

Defendants.

**NO. C09-1377 RAJ**  
**SUPPLEMENTAL**  
**DECLARATION OF**  
**GEORGE D. BARTELL**

**SUPPLEMENTAL DECLARATION OF**  
**GEORGE D. BARTELL**  
C09-1377 RAJ

LAW OFFICES  
**BENNETT BIGELOW & LEEDOM, P.S.**  
1700 Seventh Avenue, Suite 1900  
Seattle, Washington 98101  
T: (206) 622-5511 F: (206) 622-8986

1 I, George D. Bartell, declare as follows:

2 1. I make this declaration in support of the Plaintiffs' Motion for Preliminary  
3 Injunction filed herein and to provide clarification in response to the Court's Order filed  
4 December 22, 2009, in which the Court said that pharmacies have not "suggested that they  
5 will stop dispensing drugs any time soon."

6 2. As indicated in my October 14, 2009 declaration, I am the Chairman and CEO  
7 of Bartell Drugs, which owns 57 pharmacies licensed in the state of Washington.

8 3. Bartell Drugs has started analyzing the impact of the reduction in Medicaid  
9 reimbursement caused by the State's implementation of new average wholesale price  
10 computations for branded drug products. Our initial assessment of the impact is that, for  
11 many drugs, the reimbursement paid by Medicaid does not and will not cover the costs of  
12 filling the prescriptions.

13 4. It is readily apparent at this point that Bartell Drugs cannot continue to service  
14 Medicaid patients at many of its pharmacies. Based upon the initial data received and  
15 analyzed, we are immediately withdrawing fifteen (15) pharmacies from Medicaid  
16 participation based upon the September 26, 2009 reduction in pharmacy reimbursement. We  
17 do this with grave reluctance as we value all of our customers and believe that their ability to  
18 access needed medicine is of paramount importance. The problem that Bartell Drugs  
19 confronts is that it cannot financially maintain a Medicaid pharmacy line of business where  
20 the State refuses to cover the costs of dispensing. A notice to Medicaid beneficiaries is being  
21 posted at each of the affected pharmacies, the form of which is attached at Exhibit A. A  
22 notice to DSHS of the withdrawal is being drafted and will be submitted shortly. As further  
23 data is received analyzed, we will determine whether we must remove more or even all  
24 Bartell Drugs  
25  
26

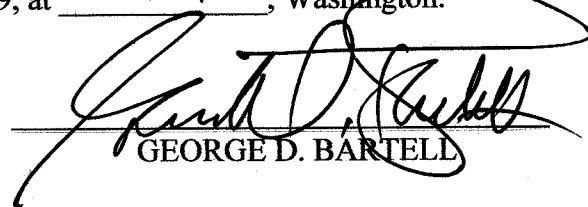
**SUPPLEMENTAL DECLARATION OF  
GEORGE D. BARTELL**  
C09-1377 RAJ

LAW OFFICES  
**BENNETT BIGELOW & LEEDOM, P.S.**  
1700 Seventh Avenue, Suite 1900  
Seattle, Washington 98101  
T: (206) 622-5511 F: (206) 622-8986

1 pharmacies from participation.

2 I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is  
3 true and correct.

4 Executed on 29th DECEMBER 2009, at SEATTLE, Washington.

5  
6   
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

GEORGE D. BARTELL

{2422.00001/M9621156.DOC; 1}

SUPPLEMENTAL DECLARATION OF  
GEORGE D. BARTELL  
C09-1377 RAJ

**CERTIFICATE OF SERVICE**

On January 4, 2010, the undersigned served true and correct copies of SUPPLEMENTAL DECLARATION OF GEORGE D. BARTELL and this CERTIFICATE OF SERVICE with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following upon the following:

Washington Attorney General's Office:

Angela D. Coats McCarthy – [AngelaC3@atg.wa.gov](mailto:AngelaC3@atg.wa.gov)

William T. Stephens – [bills3@atg.wa.gov](mailto:bills3@atg.wa.gov)

United States Department of Justice:

Ethan Price Davis, Trial Attorney – [edavis@aya.yale.edu](mailto:edavis@aya.yale.edu),  
[ethan.p.davis@usdoj.gov](mailto:ethan.p.davis@usdoj.gov)

Co-Counsel for Plaintiffs:

Lisa Dobson Gould – [ldobsongould@bblaw.com](mailto:ldobsongould@bblaw.com)

Renee M. Howard – [rhoward@bblaw.com](mailto:rhoward@bblaw.com)

Richard P. Darke – [rpdarke@duanemorris.com](mailto:rpdarke@duanemorris.com)

Frederick R. Ball – [frball@duanemorris.com](mailto:frball@duanemorris.com)

Nicholas J. Lynn – [NJLynn@duanemorris.com](mailto:NJLynn@duanemorris.com)

Christopher Patelle – [cjpetelle@duanemorris.com](mailto:cjpetelle@duanemorris.com)

DATED this 4th day of January, 2010.

s/ Mary Elynne Tappero

Mary Elynne Tappero

# Attention Medicaid Patients

Changes were made recently to the compensation received by pharmacies for filling DSHS/Medicaid prescriptions.

Unlike other insurance providers, Washington State Department of Social and Health Services (DSHS) has made no effort to adjust payment for your medications, resulting in significant losses for pharmacies.

Discussions with the DSHS and legal action so far has failed to resolve this issue. As a result, Bartell Drugs has been forced to discontinue filling Medicaid prescriptions at this location **effective February 1, 2010.**

The problem is not with you but with the State. We regret that we have been forced to take this step and hope that we will be able to continue to serve your other needs.

We hope that the State will reconsider their reimbursement to pharmacies and their responsibility to provide access to all Medicaid recipients. For those concerned, we urge you to contact the Governor's office at 360-902-4111 or your State Legislators. The legislative hotline is 1-800-562-6000.



Ballard Pharmacy 5605 22nd Avenue NW, Seattle WA 98107